



## **COMPLAINT FOR FEDERAL TAXES**

PLAINTIFF, the United States of America, by and through its attorneys,  
complains of defendants as follows:

1. This a civil action in which the United States of America seeks to
  - a) foreclose its federal tax lien against one parcel of real property located in Park Ridge, New Jersey; and
  - b) sell such real property and apply the proceeds towards payment of the unpaid taxes, penalties, and interest of Jon N. Rutenber and Virginia Lynn Rutenber.

### **JURISDICTION & VENUE**

2. This civil action is commenced at the request and with the authorization of the Chief Counsel for the Internal Revenue Service, a delegate of the Secretary of Treasury, and at the direction of the Attorney General of the United States, pursuant to 26 U.S.C. § 7401.

3. Jurisdiction over this action is conferred upon this court by virtue of 28 U.S.C. §§ 1331, 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7403.

4. Venue is proper in this district and division under 28 U.S.C. § 1655 because the real property in issue is located within this judicial district and under 28 U.S.C. § 1396 because the tax liabilities at issue arose in this judicial district.

## PARTIES

5. Plaintiff, the United States of America, is a sovereign body politic.

6. Defendant Robert Giacomelli has an address of 272 Vitmar Place, Park Ridge, NJ 07675. The Court has jurisdiction over the defendant Robert Giacomelli because he resides in this District and may claim an interest in the subject property that is in this district.

7. Defendant Kelly Giacomelli has an address of 272 Vitmar Place, Park Ridge, NJ 07675. The Court has jurisdiction over the defendant Kelly Giacomelli because she resides in this District and may claim an interest in the subject property that is in this district.

8. Defendant Wells Fargo Bank, N.A. has an address of 25 Commerce Drive, 3d Fl., Cranford, NJ, 07016. The Court has jurisdiction over the defendant Wells Fargo Bank, N.A. because it may claim an interest in the subject property that is in this district.

9. Defendant Bergen Anesthesia Associates has an address of 718 Teaneck Road, Teaneck, NJ 07666. The Court has jurisdiction over the defendant Bergen Anesthesia Associates because it may claim an interest in the subject property that is in this district.

10. On or around December 4, 2006, a delegate of the Secretary of Treasury of the United States assessed Jon N. Rutenber income tax in the amount of \$364,655.00 for the 2003 tax year.

11. Proper notice and demand for payment of the assessment described in ¶ 10 was made on Jon N. Rutenber.

12. The amount of \$734,959.58, plus interest, penalties and costs accrued and accruing according to law, is due and owing to the United States as of March 1, 2010 as a result of the assessment described in ¶ 10.

13. On or around December 18, 2006, a delegate of the Secretary of Treasury of the United States assessed against Jon N. Rutenber and Virginia Lynn Rutenber income tax in the amount of \$91,678.00 for the 2005 tax year.

14. Proper notice and demand for payment of the assessment described in ¶ 13 was made on Jon N. Rutenber and Virginia Lynn Rutenber.

15. The amount of \$100,232.16, plus interest, penalties and costs accrued and accruing according to law, is due and owing to the United States as of March 1, 2010 as a result of the assessment described in ¶ 13.

16. The aforementioned assessments were correctly made in accordance with law.

17. By reason of the assessments described in ¶¶ 10 & 13 above, federal

tax liens arose pursuant to 26 U.S.C. §§ 6321 and 6322, and said tax liens attached to all property and rights to property then owned or thereafter acquired by Jon N. Rutenber & Virginia L. Rutenber.

18. Notices of Federal Tax Lien reflecting the liabilities described in ¶¶ 10 & 13 above were filed at the Bergen County Superior Court on May 25, 2007.

19. Jon N. Rutenber and Virginia Lynn Rutenber acquired title to certain real property, to which the tax liens described in ¶ 17 attached, located in Park Ridge, New Jersey (the "Park Ridge Property"), and more particularly described as:

All that certain plot, piece or parcel of land, with the building and improvements thereon erected, situate, lying and being in the Borough of Park Ridge, County of Bergen, State of New Jersey, bounded and described as follows:

BEGINNING at an iron pipe found in the southerly line of Vitmar Place therein distant 107.15 feet as measured westerly along the same from its intersection with the westerly line of Grobel Place and from said point of BEGINNING, thence running;

1. South 01 degrees 12 minutes 07 seconds West., a distance of 193.20 feet to a point, thence;

2. North 88 degrees 9 minutes 00 seconds West., a distance of 106.71 feet to a point, thence;

3. North 2 degrees 48 minutes 00 seconds East., a distance of 187.61 feet to an iron bar found in the southerly line of Vitmar Place, thence;
4. Along the southerly line of Vitmar Place on a curve to the right having a radius of 50.00 feet an arc length of 2.48 feet to a point, thence;
5. Continuing along the southerly line of Vitmar Place South 88 degrees 48 minutes 00 seconds East., a distance of 100,00 feet to the point and place of BEGINNING.

This description is in accordance with a revised survey made by Frank G. Whittaker, PLS on April 2, 2008.

Also commonly known as 272 Vitmar Place, Park Ridge, N.J.

20. Jon N. Rutenber and Virginia L. Rutenber transferred the Park Ridge Property to defendants Robert Giacomelli and Kelley Giacomelli, which transfer was made subject to the tax preexisting liens described in ¶ 17.

21. Defendant Wells Fargo Bank N.A. may claim an interest in the Park Ridge Property based on a mortgage recorded on or around April 28, 2008.

22. Defendant Bergen Anesthesia Associates may claim an interest in the Park Ridge Property based on a judgment obtained against Jon N Rutenber and Virginia L. Rutenber in a civil action in the New Jersey Superior Court, Law Division, filed on or around May 23, 2003.

24. The federal tax liens that attach to the Park Ridge Property should be foreclosed, the property should be sold, and the proceeds applied to the federal

tax liabilities of Jon N. Rutenber and Virginia Lynn Rutenber.

WHEREFORE, plaintiff, the United States of America, prays as follows:

A. That the Court order, adjudge, decree, and declare that the United States of America has valid and subsisting Federal tax liens by virtue of the assessments described in paragraphs 10 & 13, above, on all property and rights to property owned on or acquired after the date of the assessments described in paragraph 10 & 13, above, by Jon N. Rutenber and Virginia Lynn Rutenber, and specifically upon the real property described in paragraph 18 and belonging to defendants Robert Giacomelli and Kelley Giacomelli;

B. That the Court order and adjudge that the Federal tax liens attaching to the Park Ridge Property be foreclosed;

C. That the Court order, adjudge, decree and declare that the real property be SOLD free and clear of any right, title, lien, claim, or interest of any of the parties herein, and that the proceeds from the sale be distributed in accordance with the findings of this Court and the rights of the parties as herein determined;

D. That the Court award the United States its costs of prosecuting this action; and

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E. That the Court order such other and further relief as the Court deems just and proper under the circumstances.

Dated: September 21, 2010

Respectfully Submitted,

JOHN A. DICICCO  
Acting Assistant Attorney General

/s/ Yonatan Gelblum  
YONATAN GELBLUM  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 227  
Washington, DC 20044  
(202) 305-3136  
Yonatan.Gelblum@usdoj.gov  
YG 8750  
Counsel for the United States